



ENVIRONMENTAL DEFENSE

finding the ways that work

SAFETEA-LU Transportation Reauthorization: Environmental Scorecard

February 21, 2006 Updated Edition

On July 29, 2005, Congress approved a \$286.4 billion 5-year transportation reauthorization bill. In several provisions, the law somewhat weakens accountability of road builders for the environmental impacts of their projects, but in other provisions the law strengthens requirements for regional and state transportation plans to meet the objectives of the planning process, including minimizing fuel use and emissions. Environmental Defense and its allies blocked a wide array of proposals that would have sharply weakened 40 years of protections for public health, communities, and the environment. We won reauthorization and expansion of important transportation market incentive programs that can help reduce growth in traffic and pollution. This scorecard below summarizes some of the key wins and losses.

New Requirements for Transportation Plans to Minimize Fuel Use and Emissions

- ☞ Metropolitan Planning Organizations (MPOs) and states must adopt transportation plans that "accomplish the objectives" of the planning process to improve mobility and foster economic growth and development while simultaneously minimizing fuel consumption and air pollution.
- ☞ This will require adoption of new performance-based planning and evaluation frameworks and consideration of alternative investments and strategies such as high performance corridors strategies to bundle better traffic management, pricing incentives, improvements for transit, walking, and cycling, and incentives for smarter growth.

More Funding for Air Quality Improvement Programs, Including Diesel Retrofits

- ☞ Funding for transit programs increased proportional to the growth in total funding.
- ☞ We helped ensure diesel retrofits are eligible for Congestion Mitigation Air Quality (CMAQ) funds and encouraged such funds be directed to effective pollution reduction.
- ☞ A 27% boost in the CMAQ program, to \$1.7 billion a year, was outpaced by over one-third growth in total federal surface transportation funding for roads and transit initiatives.

Lots More Funding for Pedestrian and Bicycle Programs

The America Bikes Coalition, which we supported, won unprecedented federal support for bicycle and pedestrian friendly communities.

- ☞ The bill authorizes \$612 million in over the next 5 years to the *Safe Routes to School* program, supporting community projects to improve walk and bike access to schools.
- ☞ A new *Non-Motorized Transportation Pilot Program* will establish projects to complete comprehensive bicycling and walking networks in four communities.

Clean Air Conformity: Weaker But Intact

We worked with air officials and others to stop proposals that would have sharply weakened the Clean Air Act and conformity rules intended to keep transportation projects and plans from undermining timely attainment of healthful air.

- ☞ We won statutory affirmation that conformity applies to particulate pollution hot spots.
- ☞ We blocked a proposal to eliminate consideration of long-term air quality impacts of road projects and won a compromise requiring continued conformity for a 20-year horizon unless local and state officials decide, with public input, to adopt a shorter 10-year horizon.
- ☞ Congress reduced the frequency of accounting for the air quality impacts of transportation projects to once every 4 years (instead of 3), with a new 1-year grace period following a conformity lapse. This means that areas will be able to continue approving funds for road projects that cause air quality plans to fail for two more years than was the case since 1990, driving up the costs of achieving clean air and delaying needed public health protection.

More Consideration of Conservation and Mitigation Strategies in Transportation Planning

Several coalitions of conservation groups we supported won gains in a few areas of law and policy.

- ☞ The bill requires state DOTs to consider conservation plans and mitigation strategies in updating transportation plans and expands support for management of invasive species.
- ☞ The final bill excluded a Senate proposal for a \$2 billion 6-year funding set aside that would have funded highway stormwater mitigation activities using highway funding.
- ☞ STP and NHS funds had been available for environmental restoration and pollution abatement (including retrofit or construction of stormwater treatment systems) to address water pollution or environmental degradation caused or contributed to by transportation facilities, but now can be used for mitigation projects related to Federal highways not limited to those currently undergoing reconstruction, rehabilitation, or resurfacing.

Environmental Reviews of Transportation Projects: More Power for Road Bureaucrats?

- ☞ The final bill rejected a Senate proposal that would have allowed federal highway bureaucrats to disregard transportation plans developed by metropolitan planning organizations and land use plans adopted by state or local governments or tribes, as well as environmental protection plans relating to air and water quality, habitat, endangered species, when evaluating major proposed highway and transit projects.
- ☞ The final bill potentially increased the authority of federal and state highway bureaucrats to limit consideration of alternatives to building new highways when preparing environmental impact statements, but this is sharply bounded by new requirements that state and regional transportation plans must meet the objectives of the planning process and continuing requirements that highway projects be reviewed for their adverse environmental, social and economic impacts, and that mitigation strategies be identified to eliminate or minimize these.
- ☞ We protected authority for resource agencies (e.g., Army Corps of Engineers, Department of Fish and Wildlife, and historic protection agencies) to consider

alternatives to meet their statutory responsibility to avoid or minimize adverse harms to water quality, air quality, historic resources, and endangered species, if highway agency bureaucrats go too far in disregarding these options in the part of the environmental review process they control.

- 🔗 The final bill set a new requirement that challenges to transportation project environmental approvals must be filed within 180 days (which was better than the 90 day limit proposed by the House) after the issuance of a record of decision. This will compel local officials and the public to file law suits to challenge projects often years before there is funding to build them, rather than working issues out as part of the negotiations over project funding.

Protection of Parks and Historic Resources: Weaker But Largely Intact

The Senate proposed to seriously undermine Section 4(f) of the 1966 DOT, which has long protected historic resources, parks, wildlife and waterfowl refuges, and recreation areas.

- 🔗 We failed to block changes to this important law as it affects non-historic resources.
- 👍 But we won inclusion of strong requirements for public notice and comment every time the new *de minimis* exemption to 4(f) protections is used, unlike the earlier Senate provision.
- 👍 We won inclusion of a strong definition of what constitutes a *de minimis* impact.
- 👍 We limited the *de minimis* exemption for parks, wildlife and waterfowl refuges, and recreation areas to Section 4(f) 1, which prevents a road project from harming these resources if there is any feasible and prudent alternative. The requirement of 4(f) 2, requiring all possible planning to minimize harm to the protected resource, though not through a separate alternative route analysis, remains intact.
- 👍 We won a new transit in parks funding program to help manage traffic in parks.

Delegation of the Federal Role in Environmental Review Oversight

There will be new delegation of the federal role in environmental reviews to states, weakening checks and balances in the system, but we helped secure some checks on the delegation of power.

- 🔗 The final bill establishes a pilot program that will enable five states—Alaska, California, Ohio, Oklahoma, and Texas—to write their own rules for determining which transportation projects receive categorical exclusions from the environmental review process. States were not chosen based on demonstrated capacity to meet or exceed federal requirements and some of these states may be challenged to do a proper job.
- 👍 We won inclusion of multiple requirements for public notice and comment to provide some oversight about delegated agency performance, and periodic USDOT oversight of the delegation program, with continuation of federal judicial review of all delegated decisions.

Increased Opportunities for Transportation Market Incentives – But Flexibility Still Falls Short

The bill boosts opportunities for states to use market incentives—and in particular tolling—to reduce traffic, increase the capacity of the existing transportation system, and help fund

improved transit services and mitigation. But barriers continue to impede tolling of existing highway lanes.

- ☞ We won flexibility for all states to *convert HOV lanes to High Occupancy Toll (HOT) lanes*. However, solo drivers of hybrids and high fuel efficiency Tier II vehicles are permitted to use HOV lanes with the requirement that they pay a toll (which may be set to be “no toll”).
- ☞ We won reauthorization of the *Value Pricing Program*, which will now provide \$12 million a year in funding and the authority for 15 states to toll existing and new lanes on federal aid highways. We failed to expand the program, which now has room for only two new states.
- ☞ We won a \$3 million/year Value Pricing Program set aside in FY'06-'09 for *non-toll market incentive projects*, such as pay-as-you-drive insurance, carsharing, and parking pricing.
- ☞ We won a new *Express Lane Demonstration Program*, which authorizes states to develop 15 projects to toll new lanes or convert HOV lanes to tolled lanes, with requirements for public involvement in setting toll project goals (including equity, environment, use of alternative modes) and in monitoring and reporting on progress towards those goals. This can apply tolls to existing lanes on highways that are undergoing improvements.
- ☞ However, 3 new toll roads are authorized under a new *Interstate Construction Pilot Program*, bypassing the rather more balanced requirements of the other tolling programs.
- ☞ We failed to win flexibility for all states to toll existing general purpose lanes.
- ☞ We failed to win an increase in the \$105 per month limit for tax-free transit benefits, which we wanted to raise to match the \$200 tax-free parking commuter benefit.

Congressional Intervention into Environmental Reviews

- ☞ We helped block an effort to overturn local settlement discussions resolving long-standing conflicts over the proposed Legacy Highway that threatens the Great Salt Lake wetlands.

Funding for Metropolitan Planning

- ☞ We helped win a 57 percent increase in the funding set aside for metropolitan planning, though we had sought a higher increase in this to improve regional institutional capacity.

For more information, go to www.environmentaldefense.org/go/transportation or contact Michael Replogle, 202-387-3500 or mreplogle@environmentaldefense.org.